

Wednesday, September 14, 2016 9:00 am, first case
16-0076 US Dist. Ct. (ND)

Board of **Water Works Trustees** of the City of Des Moines, Iowa v. **Sac County** Board of Supervisors, as Trustee of Drainage Districts 32, 42, 65, 79, 81, 83, 86, and **Calhoun County** Board of Supervisors and Sac County Board of Supervisors, as Joint Trustees of Drainage Districts 2 And 51, and **Buena Vista County** Board of Supervisors and Sac County Board of Supervisors, as Joint Trustees of Drainage Districts 19 and 26 and Drainage Districts 64 and 105

Attorneys: Richard A. Malm – Appellant, John E. Lande – Appellant, Colleen MacRae – Appellant, Charles F. Becker – Appellees, Michael R. Reck – Appellees, Stephen H. Locher – Appellees, David Y. Chung – Appellees

Case Summary: Plaintiff, the water utility for the City of Des Moines, filed a complaint in federal district court asserting ten causes of action related to the utility's contention that defendant drainage districts are responsible for excessive nitrate levels in the Raccoon River resulting in increasing nitrate removal costs for the utility. The United States District Court for the Northern District of Iowa certified four questions of law to the supreme court: (1) As a matter of Iowa law, does the doctrine of implied immunity of drainage districts as applied in cases such as Fisher v. Dallas County, 369 N.W.2d 426 (Iowa 1985), grant drainage districts unqualified immunity from all of the damage claims set forth in the Complaint?; (2) As a matter of Iowa law, does the doctrine of implied immunity grant drainage districts unqualified immunity from equitable remedies and claims, other than mandamus?; (3) As a matter of Iowa law, can the plaintiff assert protections afforded by the Iowa Constitution's Inalienable Rights, Due Process, Equal Protection, and Takings Clauses against drainage districts as alleged in the Complaint?; and (4) As a matter of Iowa law, does the plaintiff have a property interest that may be the subject of a claim under the Iowa Constitution's Takings Clause as alleged in the Complaint?

Facts of the Case:

The Des Moines Water Works (DMWW) has filed a lawsuit in Federal Court against 11 drainage districts in northern Iowa for the amount of nitrates deposited into the Raccoon River. DMWW has spent considerable funds to remove nitrates in order to provide clean drinking water to more than 500,000 customers in central Iowa. DMWW traces the source of nitrate pollution to agricultural run-off. The lawsuit seeks to hold the drainage districts responsible for the actions of farmers and the farming industry in their areas. Drainage Districts were first created by the Iowa Legislature more than 100 years ago as a way to encourage and protect recovered farm land – draining swamps and wetlands to recover arable land – and encourage tiling systems to aid in drainage of farm land. The Drainage Districts have traditionally received immunity from lawsuit because they were creating a public good. The DMWW maintains that since times have changed, so too should the protections given to the Drainage Districts. While the Federal lawsuit cites increased nitrate levels and other pollutant impact, the questions before the Iowa Supreme Court are much narrower. Before proceeding with the Federal suit, the Federal District Court has asked the two parties to weigh in on 4 questions about the nature of the legal protection afforded the Drainage Districts. The decision of the Iowa Supreme Court will have a major impact on the federal lawsuit, but will not close the case. Ultimately, the lawsuit will have to be decided by the Federal Court.

Question 1:

The first issue has to do with Immunity. The question here is whether Drainage Districts have complete immunity from the type of lawsuit brought by the DMWW. In its brief, DMWW argues that since the immunity from lawsuit was created in part to encourage a public good, the immunity should be removed to facilitate a greater public good – the provision of clean drinking water downstream. The appellees (the

Drainage Districts) cite more than a hundred years of precedent showing a consistent denial by courts to allow lawsuits to go forward based on the immunity provided by the Iowa legislature.

Question 2:

The second issue involves the type of remedy that might be allowed. Because of the nature of the Drainage Districts and how they were created, typically a lawsuit would not involve the payment of funds to plaintiffs if successful, but rather it would be limited to mandamus. Mandamus is a legal concept that basically means to require someone to fulfill the duties of their job. In this situation and under the theory of mandamus, if DMWW were successful, the trustees of the drainage districts would simply be required to enforce stricter standards on member farmers, but would not be held financially liable. The DMWW argues that the drainage districts should be liable for “equitable relief” (money damages).

Question 3:

The third issue concerns the DMWW standing to sue for constitutional protection. In general, individuals are constitutionally protected. Business and corporations may also enjoy constitutional guarantees. As a special political organization, does a Water Works even qualify to make a claim against another special political organization, the drainage districts? If the answer is Yes; the next aspect is what standard of scrutiny should be applied by the Court to examine claims? Basically, the Court must decide how much evidence is necessary in order to qualify DMWW as a party to the lawsuit. Strict Scrutiny would require overwhelming evidence that DMWW is NOT qualified to bring suit. The Rational Basis test requires a much lower level of evidence to disqualify DMWW from being party to the suit.

Question 4:

In order to recover damages in a lawsuit, a party must have standing to sue – in other words a real interest in the case: actual harm done, real property damaged, etc. The Federal Court here asks whether the DMWW has a real property interest in this case. The DMWW cites its ownership of property along the Raccoon River as evidence of a stake in the case – and evidence of actual harm done. The Drainage Districts, however, argue that what is really in question is ownership of the water IN the river not land NEAR the river. They maintain that the water itself is a public good – owned by all citizens of the state and by the state itself – and not a private commodity. As such, a private company like DMWW has no property interest and cannot therefore show real harm done to it.

Throughout their answers, the Drainage Districts maintain that A) by law, they enjoy immunity from lawsuits as a provision of their creation more than 100 years ago and B) even if they can be sued, they are not the proper parties to sue. They explain the nature of Drainage Districts carries no enforcement provisions against individual farms or farmers. If DMWW has an issue with water containing high nitrate levels in river water, they either should sue individual farmers (very hard to prove that polluted water comes from specific farms) or just do their job to clean the water to provide a safe drinking water supply. DMWW feels that it is unfair that customers in central Iowa should have to bear the burden of paying to clean water that was clearly polluted by others.

The Iowa Supreme Court’s answers to the questions posed by the Federal District Court will go a long ways to resolving this aspect of the lawsuit. But the answers will definitely not end the on-going issues between urban/rural interests.